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INFO RUCNSAD/SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE
RUEHUJA/AMEMBASSY ABUJA 2157
RUEHAR/AMEMBASSY ACCRA 2551
RUEHDS/AMEMBASSY ADDIS ABABA 2673
RUEHRL/AMEMBASSY BERLIN 1166
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UNCLAS SECTION 01 OF 11 HARARE 000042

AF/S FOR B. WALCH
ADDIS ABABA FOR USAU
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TREASURY FOR D. PETERS AND T.RAND
NSC FOR SENIOR AFRICA DIRECTOR B.PITTMAN
STATE PASS TO USAID FOR L.DOBBS AND E.LOKEN
STATE PASS TO EB/IFD/OIA
STATE PASS TO USTR

SIPDIS

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SUBJECT: 2009 INVESTMENT CLIMATE STATEMENT - ZIMBABWE

REF: 08 STATE 123907

11. The Government of Zimbabwe's corruption and mismanagement have severely crippled the local economy making it unlikely to attract or absorb significant foreign direct investment in 2009. GDP has declined by roughly 50 percent in the past eight years, the largest peacetime drop ever recorded. The Economist Intelligence Unit estimates that it contracted 12.8 percent in 2008. Year on year inflation was officially estimated to be 231 million percent in July 2008, the highest in the world. Unofficial inflation assessments conducted by independent economists estimate annual inflation to be in the hundreds of billions, if not quadrillions, but the local currency inflation figures are less relevant as dollarization of the economy becomes widespread. Government policies have seriously eroded the rule of law and put private property rights at grave risk. In the absence of comprehensive reforms, prospects for foreign direct investment, along with the country's economic outlook, are bound to remain dismal.

12. The World Bank Group's "Doing Business 2009" report ranked Zimbabwe 158 out of 181 countries considered for ease of doing business, and one of the worst performers in southern Africa. Further illustrative of the abysmal investment climate, Zimbabwe was ranked 133 out of 134 countries considered in the World Economic Forum's Global Competitiveness Index for 2008-2009. In addition, Zimbabwe was second from the bottom out of 68 regions and countries surveyed in the Vancouver-based Fraser Institutes 2007-2008 Annual Survey of Mining Companies on the attractiveness of government mining policies.

Openness to Foreign Investment

13. The government's command and control tendencies and its intervention in many sectors make Zimbabwe generally unwelcoming to foreign direct investment, particularly from Western countries. Furthermore, the erosion of the rule of law and sanctity of contracts has had a chilling effect on business and on foreign direct investment. Nonetheless, a few U.S. multinationals maintain subsidiaries in the country, largely holdovers from better years a decade and more ago. Many others sell their products through certified dealers.

14. The government's priority sectors for foreign investment are manufacturing, mining and infrastructure development for tourism. In these sectors foreign investors have been permitted to own up to 100 percent of the business enterprise, although in 2008 the government introduced an Indigenization Act that mandates, over time, 51 percent indigenous ownership of businesses. It also introduced an Amendment to the Mines and Minerals Act that has onerous indigenization requirements (see below).

15. The government reserves several sectors for local investors. Under current laws, foreign investors wishing to participate in these sectors may only do so by entering into joint venture arrangements with local partners. The foreign investors are restricted from owning more than 35 percent of the operation. The following industries face these restrictions:

Agriculture/Forestry

-- Primary production of food and cash crops

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-- Primary horticulture
-- Game, wildlife ranching and livestock
-- Forestry
-- Fishing and fish farming
-- Poultry farming
-- Grain milling
-- Sugar refining

Transportation

-- Road haulage
-- Passenger bus, taxis and car hire services of any kind
-- Tourist Transportation
-- Rail operations

Retail/wholesale trade, including distribution

Barber shops, hairdressing and beauty salons
Commercial photography
Employment agencies
Estate agencies
Valet services
Manufacturing, marketing and distribution of armaments
Water provision for domestic and industrial purposes
Bakery and confectionary
Tobacco packaging and grading post auction
Cigarette manufacturing

16. Foreign investors wishing to start a new project in Zimbabwe must first register with and be approved by the Zimbabwe Investment Authority, which then issues Investment Certificates. This is the first port of call for any investor wishing to invest in Zimbabwe.

17. All private firms are required to incorporate and register with the Registrar of Companies within the framework of their investment certificate or exchange control approval. Foreign investment in existing companies requires Reserve Bank of Zimbabwe approval. Applications are submitted to the Bank's Exchange Control Department through the investor's commercial bank or merchant bank or other authorized dealer. Foreign investors with valid investment certificates may acquire real estate.

18. In the mid-1990s, the government identified privatization of Zimbabwe's parastatal companies as a priority, but only two state-owned enterprises have been successfully privatized since then. The parastatals' operational inefficiencies, weak balance

sheet positions, a huge debt overhang, and the current political impasse make it unlikely that privatization will go forward in the near term.

¶9. Commensurate with its anti-West stance in recent years, the government began to encourage economic ties with Asian countries, particularly China, as a means of arresting further economic decline and combating what it casts as neo-colonialism. Under this "Look East" policy, selected Asian investors have been offered access to reserved sectors, sometimes at the expense of local or established foreign investors. Despite the official emphasis placed on these ties and a few high profile project announcements, Asian investment is dwarfed by the remaining investment from South Africa and the U.K.

Conversion and Transfer Policies

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¶10. For the past several years, Zimbabwe has experienced an acute foreign currency deficit that has caused crippling shortages of fuel, electric power and other imported goods and components, defaults on public and private sector debt service payments, and a sharp decline in industrial, agricultural, and mining operations. Foreign currency is highly difficult to obtain through licit channels due to the Reserve Bank of Zimbabwe's exchange controls, the country's poor export performance, and the lack of balance of payments support. The Foreign Exchange Control Act regulates currency conversions and transfers. It does not prohibit foreign investors from moving assets between Zimbabwean and foreign accounts, but lack of foreign exchange and constraints of the foreign exchange regime impede the remittance of investment returns. Some local businesses have credibly charged that the government has raided their foreign currency accounts to meet certain foreign obligations falling due.

¶11. Exporters may retain 85 percent of their foreign currency account balance for their own use within 30 days while 15 percent must be sold to the Reserve Bank at the highly disadvantageous inter-bank exchange rate rather than the market-determined parallel rate. Uncertainties associated with retention requirements and retention period, which have been adjusted frequently and without notice, constrain business planning and operations. The retention requirement and unfavorable exchange rate act as an effective tax on exports.

¶12. The Foreign Exchange Control Act extends to prospective outward investment as well as dividend remittances. Traditionally, the government has discouraged investment by Zimbabweans outside the country, and relatively few Zimbabwean firms made such investments.

Expropriation and Compensation

¶13. Despite provisions in Zimbabwe's constitution that prohibit the acquisition of private property without compensation, the government has sanctioned seizures of privately owned agricultural land without compensation since 2001. Many of the farms seized were subsequently transferred to government officials and other regime supporters. The government in April 2000 amended the constitution to authorize the compulsory acquisition of privately owned commercial farms with compensation limited to the improvements made on the land. In September 2005, the government amended the constitution again to transfer ownership of all expropriated land to the government. Since the passage of this amendment, top government officials, ruling party supporters, and members of the security forces have continued to disrupt production on commercial farms, including those owned by foreign investors and covered by Bilateral Investment Promotion and Protection Agreements (BIPPA).

¶14. In November 2006, the government issued the first batch of 99-year leases to 125 farmers. These leases, however, are not readily transferable as the government retains the right to strip the lease at any time.

¶15. The government's program to seize commercial farms without either the intention or the funds to compensate the titleholders, who have no recourse to the courts, has raised serious questions about respect for property rights and the rule of law in Zimbabwe.

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Accordingly, Zimbabwe was ranked 113 out of 181 countries considered with respect to the country's ability to protect investment under the World Bank Group's "Doing Business 2009" Report.

¶16. President Mugabe and other politicians have in the past threatened to target the mining and manufacturing sectors for similarly forced indigenization. In 2008, the government amended the Mines and Minerals Act outlining indigenization requirements for minerals. For strategic energy minerals (coal, methane, uranium), the legislation would require mining companies engaged in their extraction or exploitation to transfer ownership to the state of 51 percent of the shares; 25 percent would be non-contributory (i.e. without compensation). For precious metals/precious stones, 25 percent of the shares must be transferred to the state without compensation and the other 26 percent are required to be owned by the state or by indigenous Zimbabweans.

¶17. In March 2008, the government enacted the Indigenization and Economic Empowerment Bill that mandates, over time, 51 percent indigenous ownership of business.

Dispute Settlement

¶18. The government has acceded to the 1965 convention on the settlement of investment disputes between states and nationals of other states, and to the 1958 New York convention on the recognition and enforcement of foreign arbitral awards.

¶19. In the event of an investment dispute, the Government of Zimbabwe agrees, in theory, to submit the matter for settlement by arbitration according to the rules and procedures promulgated by the United Nations Commission on International Trade Law (UNCITRAL), once the investor has exhausted the administrative and judicial remedies available locally. On the other hand, Constitutional Amendment 17, enacted in 2005, removed the right of landowners whose land has been acquired by the government to challenge the acquisition in court.

¶20. A group of Dutch farmers whose farms were seized under the land reform program took their case to the International Centre for the Settlement of Investment Disputes (ICSID) in April 2005, demanding that the Zimbabwe Government honor the Bilateral Investment Promotion and Protection Agreement (BIPPA) between the Netherlands and Zimbabwe. The case was heard by a tribunal in Paris in November, 2007, and the tribunal issued a verdict in 2007 that was favorable to the farmers. The Zimbabwe Government acknowledged that the farmers had been deprived of their land without payment of compensation but disputed the over US\$30 million in damages claimed by the farmers. A decision on the amount of damages has not yet been reached.

¶21. In a related case, a three-judge panel of the Southern African Development Community (SADC) Tribunal in Windhoek, Namibia, ruled that Zimbabwe's violent land reform exercise discriminated against a group of white farmers who filed an application challenging the seizure of their farms. The Tribunal ruled that the government was in breach of the SADC treaty with regards to discrimination. Although the government's first reaction was to refuse to recognize the ruling, it has since softened its position. It subsequently recommended that 341 white farmers be allowed to continue farming

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throughout the country.

¶22. Government efforts to influence and intimidate the judiciary

since the late 1990s have raised serious concerns about investors receiving a fair hearing in local courts. In addition, the government and ruling elite have ignored numerous adverse judgments, and senior officials have reiterated publicly that court orders that are not politically acceptable to the ruling party will not be honored. Administrations of justice in those commercial cases that lack political overtones are still generally impartial. As the government's budget constraint deepens, however, court resources have dwindled and dockets have become backlogged. A less costly dispute settlement route, which can be incorporated in contracts between companies, is alternative dispute resolution.

Performance Requirements and Incentives

¶23. Several tax breaks are available for new investment by foreign and domestic companies. Capital expenditures on new factories, machinery, and improvements are fully deductible and the government waives import tax and surtax on capital equipment. Other incentives for investors include:

- Investment allowance of 15 percent in the year of purchase of industrial and commercial buildings, staff housing and articles, implements, and machinery;
- 25 percent special initial allowance on cost of industrial buildings and commercial buildings and machinery in growth point areas is granted as a rebate for the first four years;
- Special mining lease provisions entitling the holder to specific incentive packages to be negotiated with the Ministry of Mines;
- Refund of value added tax (15 percent) for capital goods purchased in Zimbabwe and intended for use in priority projects or investment in growth points.

¶24. There are no general performance requirements outside of Export Processing Zones. Government policy, however, encourages investment in enterprises that contribute to rural development, job creation, exports, use of local materials, and transfer of appropriate technologies.

¶25. There are no discriminatory import or export policies affecting foreign firms, although the government's approval criteria are heavily skewed toward export-oriented projects. Import duties and related taxes range as high as 110 percent. Export Processing Zone designated companies must export at least 80 percent of output.

¶26. Government participation is required in new investments in strategic industries, such as energy, public water provision, railways, and armaments. The terms of government participation are determined on a case-by-case basis during license approval. The few foreign investors (for example from China and Iran) in reserved strategic industries have either purchased existing companies or have supplied equipment and spares on credit.

¶27. Foreign investors are expected to make maximum use of Zimbabwean management and technical personnel, and any investment proposal that involves the employment of expatriates must present a strong case for doing so in order to obtain work and residence permits. Normally, the maximum contract period for an expatriate is

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three years, but this will be extended to five years for individuals with highly specialized skills. Expatriates who have prior permission from the Reserve Bank's exchange control department are permitted to remit one-third of their salaries.

Right to Private Ownership and Establishment

¶28. Although Zimbabwean law guarantees the right to private ownership, this right is increasingly not respected in practice. As noted above, the government has in recent years seized thousands of private farms and conservancies, including ones belonging to Americans and other foreign investors, without due process or compensation. Most of these property owners held Zimbabwe

Investment Authority investment certificates and purchased their land after independence in 1980. Despite repeated U.S. protests, the government has not addressed the expropriation of U.S. citizen property.

Protection of Property Rights

¶29. The government's demonstrated desire to expand its control of the economy puts many investments, particularly in real property, at risk. The government's 2005 Operation Restore Order resulted in more than 700,000 persons losing their homes, their means of livelihood, or both, according to UN estimates. Many of these properties had proper titles and licenses. Although Operation Restore Order officially ended in 2005, the government continued to evict smaller numbers of people from their homes and businesses, primarily in and around Harare, in 2006 and 2007. In addition to the thousands of agricultural properties seized under land reform during the past eight years, in late 2005, the government for the first time authorized the seizure of non-agricultural land for the purpose of constructing residential stands in a Harare suburb.

¶30. Since independence, Zimbabwe has applied international patent and trademark conventions. It is a member of the World Intellectual Property Organization. Generally, the government seeks to honor intellectual property ownership and rights, although there are serious doubts about its ability to enforce these obligations due to a lack of expertise and manpower. We are not aware of any grievances over such issues, but pirating of videos and computer software is common. Most videos and computer software sold on the local market, for example, are pirated goods.

¶31. The judiciary generally upholds the sanctity of contracts between private companies. However, in the case of contracts involving the government or politically influential individuals, judgments sometimes appear biased in favor of the latter.

Transparency of the Regulatory System

¶32. The government's officially stated policy is to encourage competition within the private sector. That said, bureaucratic functions in this increasingly controlled economy lack transparency, and corruption within the regulatory system is increasingly worrisome.

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¶33. Companies, for example, are not allowed to increase the price of monitored goods without government approval. In June 2007, Minister of Industry and International Trade Obert Mpofu went a step further and introduced Operation Reduce Prices, a campaign to lower prices on all goods and services by half or more. While the measure temporarily slowed the rate of inflation, it wreaked havoc with the supply chain and accelerated the pace of economic contraction in Zimbabwe. Over the following months, police arrested and fined more than 5,000 business executives and store managers for violating the price reduction decree. Moreover, the responsible Ministry implemented the decree in a selective fashion and also failed to process price increase requests in a timely and transparent way.

¶34. In August 2006, the Reserve Bank redenominated the inflation-ridden currency, slashing three zeros from its value. As part of the redenomination regulations, the public and business were allowed to convert only set amounts at financial institutions. Police extended this prohibition to the general cash-carrying public, although there was no regulatory or legal basis for limiting the amount of cash one carried. On August 1, 2008, the Reserve Bank again redenominated the currency, lopping off 10 zeros. Coins that had been taken out of circulation in 2003 were reintroduced at face value, which only served to further complicate the monetary environment.

¶35. Zimbabwe's stock market has 83 publicly-listed companies. Overall, trading is thin and volatile, and the public stock of many smaller companies is closely held. In September 1996, the government opened the stock and money markets to limited foreign portfolio investment. Since then, a maximum of 40 percent of any locally listed company can be foreign-owned with any single investor allowed to acquire up to 10 percent of the outstanding shares. Investment on the Zimbabwe Stock Exchange (ZSE) surged in real terms in 2007 and most of 2008 as domestic investors sought a hedge against hyperinflation; risk-seeking foreign investors were drawn to Zimbabwe by a combination of undervalued assets and the expectation of political change in the short-to-medium term. Furthermore, foreign investors recognized that most companies registered on the ZSE were already compliant with the onerous indigenization requirements under discussion. The introduction of stringent trading conditions on November 17, 2008 which required all trades to be backed by a letter of confirmation from bank chief executive officers confirming the availability of funds, burst the speculative bubble. Since November 20, there has been no trading activity on the exchange.

¶36. In 2005, the government introduced a five percent withholding tax on the sale of marketable securities. It also required short-term insurance companies, long-term insurance companies, and pension funds to invest 25 percent, 30 percent and 35 percent, respectively, of their portfolios in prescribed government bonds. These requirements essentially tax portfolios at the required investment rates, since the real interest rate, with hyperinflation, is lower than -99.99 percent. The Reserve Bank, for example, introduced a one-year insurance and pension industry bond on November 14, 2008 for sale to pension funds as a mechanism to raise cheap capital; it pays 450 percent interest.

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¶37. Zimbabwe's mounting economic problems have driven foreign direct investment (FDI) inflows from US\$103 million in 2005 to US\$40 million in 2006 before rising slightly to US\$69 million in 2007, according to the World Investment Report compiled by the United Nations Conference on Trade and Development (UNCTAD).

¶38. Once relatively robust by regional standards, Zimbabwe's financial sector has contracted greatly in recent years as business and demand for sophisticated transactions evaporates. Two major international commercial banks and a number of regional and domestic banks operate with over 200 branches total. Following the well-publicized failure of a number of financial institutions in 2003, primarily due to fraud and inept management, Reserve Bank regulations have been tightened greatly. Nonetheless, financial institutions have an uncertain future due to ever-dwindling demand for credit from business clients and inconsistent policies on interest rates, statutory reserves, and exchange rates. Moreover, as the economy dollarizes, demand for local currency denominated accounts is falling, further impairing local banks.

Political Violence

¶39. The opposition and civil society groups operate in an environment of intimidation and repression. Human rights organizations reported that physical and psychological torture perpetrated by security agents and government supporters increased in the period between the March 2008 elections and the June 2008 presidential run-off. Individuals and companies out of favor with the government or regarded by the government as aligned with the opposition, routinely suffer harassment and bureaucratic obstacles in their business dealings. Indicatively, the government has closed three independent newspapers, and has denied numerous telecommunications licenses for apparently political reasons. On occasion, domestic businesspeople out of favor with the government have been incarcerated for allegedly engaging in illegal business practices such as externalization of currency.

¶40. Despite rising dissatisfaction with government policy, there have been no large-scale demonstrations, although sporadic cases of looting by soldiers and small-scale demonstrations have occurred.

Corruption

¶41. There is widespread corruption in government. Implementation of the government's ongoing redistribution of expropriated commercial farms has substantially favored the ruling party elite and continues to lack transparency. Top ruling party officials and business people supporting the ruling party have received priority in distribution of the country's resources, including priority access to limited foreign exchange, agricultural inputs, machinery and fuel.

¶42. In 2005 the government enacted an Anti-Corruption Act that established a government-appointed Anti-Corruption Commission to investigate corruption; however, it includes no members from civil society or the private sector. The Ministry of State Enterprises, Anti-Monopolies, and Anti-Corruption was also established to oversee

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and coordinate the government's efforts to combat corruption; however, government officials and police lack sufficient political backing at senior levels of the government to effectively investigate cases. The government prosecutes individuals selectively, focusing on those who have fallen out of favor with the ruling party and ignoring transgressions by members of the favored elite.

Bilateral Investment Agreements

¶43. The U.S. has no bilateral investment or trade treaty with Zimbabwe. Zimbabwe has Bilateral Investment Protection and Promotion Agreements (BIPPA) with 17 countries; only four of these treaties (with the Netherlands, Denmark, Germany and Switzerland) have been ratified.

OPIC and Other Investment Insurance Programs

¶44. The U.S. Government and Zimbabwe concluded an OPIC agreement in April 1999. Zimbabwe acceded to the World Bank's Multilateral Investment Guarantee Agency (MIGA) in September 1989. Support by the Export-Import Bank of the U.S. is not available to Zimbabwe. Many other major donor countries have also suspended their trade finance and export promotion programs, as well as investment insurance, due largely to Zimbabwe's mounting multilateral and bilateral arrears and deteriorating investment climate.

Labor

¶45. Zimbabwe's interconnected economic and political crises have prompted many of the country's most skilled and well educated citizens to emigrate, leading to widespread labor shortages for managerial and technical jobs. At the same time, the severe contraction of the economy in recent years has caused formal sector employment to drop significantly. The best available surveys place formal sector unemployment as high as 80 percent. Independent analysts estimate that only about 700,000 people, or roughly 7 percent of Zimbabwe's population, are employed in the formal sector. As noted above, foreign investors are encouraged to hire local nationals.

¶46. The country's HIV/AIDS epidemic is also taking a heavy toll on the workforce. However, with substantial support from the U.S. Government and other donors, Zimbabwe has instituted policies that have contributed to reducing the adult infection rate from 22.1

percent in 2003 to 15.6 percent in 2007.

¶47. The government is a signatory to International Labor Organization (ILO) conventions protecting worker rights, although the world body has designated Zimbabwe as a "notorious country" for its continued attempts to limit workers' right to organize and hold labor union meetings. The 1985 Labor Relations Act set strict standards for occupational health and safety, but enforcement is fairly lax and inconsistent across the industrial sectors.

¶48. In light of the hyperinflationary environment, employers and

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workers have agreed to negotiate wages and other benefits on a quarterly and monthly rather than annual basis. Collective bargaining takes place through a National Employment Council (NEC) in each industry, comprising representatives from labor, business, and government. In addition, the Zimbabwe Congress of Trade Unions (ZCTU), the country's umbrella labor organization, advocates for workers' rights.

¶49. A Tripartite Negotiating Forum (TNF) was established in 2001 for labor, business, and government to tackle macro-social issues. However, these talks have been fitful and unproductive since their inception. A continuing impasse for the TFN is disagreement between business and labor over indexing wages to the poverty datum line (PDL), which calculates the minimum required for a family of five to pay basic expenses. Independent economists estimate that roughly 80 percent of Zimbabwe's population lives below the PDL.

¶50. The government continued its harassment of the ZCTU and its leadership. In May 2008 and prior to the presidential run-off in June, police arrested ZCTU leaders for "spreading falsehoods prejudicial to the state". Under Zimbabwe labor law, the government can intervene in ZCTU's internal affairs if it determines that the leadership is not acting in the workers' interest. The government has threatened to eliminate the ZCTU, and has taken steps to marginalize the traditional unions and the formal labor dispute resolution mechanism. To undercut the strength of ZCTU, the government created an alternative umbrella organization, the Zimbabwe Federation of Trade Unions (ZFTU). However, outside of government, the ZFTU is not regarded as a legitimate labor organization. The ZCTU remains the voice of labor in Zimbabwe and the country's official and internationally recognized labor organization.

Foreign-Trade Zones/Free Ports

¶51. The government promulgated legislation creating Export Processing Zones (EPZs) in 1996. Zimbabwe now has 183 EPZ-designated companies. Benefits include a five-year tax holiday, duty-free importation of raw materials and capital equipment for use in the EPZ, and no tax liability from capital gains arising from the sale of property forming part of the investment in EPZs. Since January 2004 the government has generally required that foreign capital comprise a majority of the investment. The requirement on EPZ-designated companies to export at least 80 percent of output has constrained foreign investment in the zones. The merger between the Zimbabwe Investment Centre and the Zimbabwe Export Processing Zones Authority which began in 2006, has been completed and the new institution - the Zimbabwe Investment Authority, now serves as a one-stop shop for both local and foreign investors.

Foreign Direct Investment Statistics

¶52. Zimbabwe Net Investment Flows 1998-2007 (US\$ million) 1998
1999 2000 2001 2002 2003 2004 2005 2006 2007

Direct Investment

436	50	16	0	23	4	9	103	40	69
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Portfolio Investment

11	21	-1	-68	-2	4	2
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Source: IMF, UNCTAD, Ministry of Finance

Resources

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State Enterprise Restructuring Agency
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Zimtrade
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Zimbabwe International Trade Fair
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